

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SHERRIE BECKMAN,

Plaintiff,

Case. No. 20-CV-11815

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

STENGER & STENGER, P.C.,

Defendant.

**OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION AND
GRANTING PLAINTIFF’S MOTION FOR LEAVE TO FILE AN AMENDED
COMPLAINT**

On July 3, 2020, Plaintiff filed this complaint against Defendant Stenger & Stenger, P.C (“Stenger”) alleging violations of the Fair Debt collection Practices Act, 15 U.S.C. § 1692 *et seq.* ECF No. 1. The case is on a full pretrial referral to Magistrate Judge Morris. ECF No. 6. On September 24, 2020, Plaintiff moved for leave to amend the complaint. ECF No. 7. According to Plaintiff, after exchanging information with Stenger, she learned that the party responsible for the alleged violations is not Stenger but Valentine and Kabartas, LLC. *Id.* Accordingly, she seeks to add Valentine and Kebartas, LLC and dismiss Stenger without prejudice. *Id.*

On October 1, 2020, Magistrate Judge Morris issued a report recommending that Plaintiff’s motion be granted. ECF No. 8. As Magistrate Judge Morris explained,

“A party may amend its pleading once as a matter of course within . . . 21 days after serving it . . .” Fed. R. Civ. P. 15 (a)(1)(A). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” *Id.* Here, a summons was issued for Defendant Stenger & Stenger P.C., (ECF No. 5), but there is no record of the summons being served. “On motion or on its own, the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. “While Rule 20(a)(2) sets

forth the standard for whether a plaintiff may join multiple defendants in one federal lawsuit, Rules 15 and 21 set forth the standard for allowing a party to amend its pleadings to add or remove parties to an ongoing lawsuit.” *Dura Global Technologies, Inc. v. Magna Donnelly Corp.*, No. 2:07-cv-10945, 2011 WL 4532875, at *2 (E.D. Mich. Sept. 30, 2011).

Rule 15(a) provides that “leave shall be freely given when justice so requires.” When determining whether to grant leave to amend, the court is to consider several factors: Undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment are all 3 factors which may affect the decision. Delay by itself is not sufficient reason to deny a motion to amend. Notice and substantial prejudice to the opposing party are critical factors in determining whether an amendment should be granted. *Head v. Jellico Hous. Auth.*, 870 F.2d 1117, 1123 (6th Cir. 1989) (quoting *Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6th Cir. 1973)).

In the instant case, none of the *Head* factors appear to apply, in light of the following circumstances. Plaintiff seeks to add one party Defendant, and remove another, in light of the asserted discovery that the new Defendant is the proper party. Litigation is still early, and Plaintiff is still within the 90-day period to serve summons as originally required by Fed. R. Civ. P. 4. Finally, Plaintiff asserts that she would be prejudiced—as she has not made, nor could she make, a recovery from the original defendant—if she is not able to pursue her claim against the proper party.

ECF No. 8 at PageID.23–24. Although the Report and Recommendation states that Defendant could object to and seek review of the recommendation within 14 days of service, it has failed to file any objections. The election not to file objections to the Report and Recommendation releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the Report and Recommendation also waives any further right to appeal. *Id.*

Accordingly, it is **ORDERED** that the Report and Recommendation, ECF No. 8, is **ADOPTED**.

It is further **ORDERED** that Plaintiff's Motion for Leave to File an Amended Complaint, ECF No. 7, is **GRANTED**.

Dated: October 20, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge